IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2328 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2329 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2355 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2356 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2357 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2358 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2389 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2390 OF 2004
ALONGWITH
CRIMINAL WRIT PETITION NO. 2391 OF 2004

Smt. Gurujeet Kaur Arora ...Petitioner

Versus

M/s. Shree Sound Pvt. Ltd. & Anr ...Respondents

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Mr. Kafil Khan i/b Mr. Girish Kulkarni, Advocate for Petitioner

Ms. S.V. Gajare, APP in W.P. Nos.2328, 2329, 2355 to 2357/04.

Mr. U.V. Nikam, APP in W.P. No. 2358 & 2389/04.

Mr. R.S. Khadapkar, APP in W.P. No. 2390 & 2391/04.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 17TH OCTOBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner, the learned advocate for respondent No.1 i.e.original complainant and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against her in Criminal Case Nos.14/S/2002, 15/S/2002, 11/S/2002, 12/S/2002 and 13/S/2002, pending before the learned M.M. 29th Court, Dadar, Mumbai, Case Nos. 559/S/2002 and 833/S/2002 pending before the learned M.M. 5th Court, Dadar Mumbai and Case Nos. 417/S/2000 and 416/S/2000 pending before the learned M.M. 28th Court, Esplanade, Mumbai. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act.

3. The learned advocate for the petitioner states that the petitioner had preferred an application before the learned Magistrate for recall of process. The said application came to be rejected. Being aggrieved by the said order, the petitioner had preferred revision before the Sessions Court. After filing the revision the petitioner was of the opinion that in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs Rooplal Jindal & Ors. reported in (2004) 7 SCC 338,** the only remedy available to the petitioner would be to file an application before the High Court under Section 482 of Cr.P.C., hence, the said revision came to be withdrawn and the present petitions have been preferred.

4. As far as the order of the Magistrate rejecting the application for recall of process is concerned, in view of the decision of the Supreme Court in the case of Adalat Prasad (supra), it is clear that the Magistrate has no power to recall the process, hence, I am not inclined to interfere with the order of the Magistrate rejecting the said application for recall of process.

5. However, for the reasons recorded in the decision of this Court in the case of **V.K. Jain & Ors. Vs. Pratap Vs. Padode and Anr, reported in 2005(3) Mh.L.J. 778,** in my opinion, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

6. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be preferred within a period of five weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of five weeks from today. The learned advocate for the respondent No.1 i.e. original

complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

7. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

8. It is made clear that the revision shall be preferred in respect of the order of Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application of the petitioner for recall of process.

9. Writ Petitions are disposed of.

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